

1 *E-Filed 06/07/2010*

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9 IN THE UNITED STATES DISTRICT COURT

10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

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PETER SZANTO,

No. C 10-1364 RS

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Plaintiff,

ORDER REMANDING CASE

v.

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SZANTO REVOCABLE TRUST OF 1991,

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Defendant.

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I. INTRODUCTION AND RELEVANT FACTS

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Peter Szanto (“Peter”) attempts to remove to federal court a probate matter filed in May of 2006 in the Superior Court of California, San Mateo County. That case was filed by petitioners Paul and Victor Szanto as trustees of the Klara Szanto Revocable Trust. The petitioners initiated the state court matter with a petition to confirm transfer of a residence belonging to Klara and Paul Szanto into the Trust. Peter, the eldest son of Paul and Klara, sought permission to oppose the petition and to assert a right to Trust assets without effectively “contesting” his mother’s will. The superior court denied his request. An appellate court affirmed and observed that Peter was not actually a Trust beneficiary. Peter thereafter filed a petition to change venue to Orange County. This petition was denied. On January 25, 2010, Peter filed yet another petition seeking declaratory relief and

1 claiming rights to his parents' assets. On March 2, one of the trustees sought to declare Peter a
2 vexatious litigant. Peter filed a new complaint in the Central District of California on March 29,
3 2010, alleging that the attorneys and various judges involved in the probate matter violated certain
4 provisions of the Civil Rights Act. He then removed this matter to federal court on March 31. He
5 claims his section 1983 averments advanced in the Central District fail, at least in part, from the
6 trustee's vexatious litigant allegations. In this sense, he seems to fashion himself a "defendant" in
7 the probate matter for purposes of the federal removal statute. This matter is appropriately resolved
8 without oral argument pursuant to Local Civil Rule 7-1(b). Accordingly, the motion hearing set for
9 **June 10, 2010 is vacated.**

10 II. LEGAL STANDARD AND DISCUSSION

11 The federal removal statute, 28 U.S.C. 1441(a), permits a defendant to remove to federal
12 court "only [those] state court actions that originally could have been filed in federal court . . ." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Absent diversity of citizenship, federal-
13 question jurisdiction is required. *Id.* The party invoking section 1441 bears the burden of
14 establishing federal question jurisdiction and a district court strictly construes the statute against
15 removal. *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir. 1988). Federal question
16 jurisdiction analysis necessarily begins with the well-pleaded complaint rule: "Whether a case is one
17 arising under the Constitution or a law . . . of the United States . . . must be determined from what
18 necessarily appears in the plaintiff's statement of his own claim . . ." *Taylor v. Anderson*, 234 U.S.
19 74, 75-76 (1914).

21 While Peter repeatedly classifies himself in his papers as a "plaintiff," he also contends that
22 he may remove the probate matter to federal court as a "defendant" in light of the trustee's vexatious
23 litigation motion. It is this allegation, he contends, that gives rise to his section 1983 claims. That
24 said, he raised these claims not in the probate matter at all but in a separate lawsuit filed in the
25 United States District Court for the Central District of California. Even assuming Peter had filed a
26 proper counter-claim in *this* case that raised the Civil Rights Act issue, he could not rely on it to
27 remove the probate matter to federal court. There are two reasons. First, resolution of the probate

1 issues does not involve any cognizable federal claim, nor does the vexatious litigant issue involve
2 federal law. Second, removal is a defendant's procedural option and the grounds for it must arise
3 from the *plaintiff's* complaint. *Gully v. First Nat'l Bank*, 299 U.S. 109 (1936). A defendant cannot
4 rely on federal claims raised in his or her own counter or cross complaint. *Rath Packing Co. v.*
5 *Becker*, 530 F.2d 1295, 1303 (9th Cir. 1975) ("Removability cannot be created by defendant
6 pleading a counter-claim presenting a federal question under 28 U.S.C. [section] 1331.").
7 Accordingly, the probate matter must be remanded to state court.

8 An order remanding a removed case to state court "may require payment of just costs and
9 any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. §
10 1447(c); *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 134 (2005). The Trust seeks such an
11 award here. As the Supreme Court has instructed, "[a]bsent unusual circumstances, courts may
12 award attorney's fees under § 1447(c) only where the removing party lacked an objectively
13 reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees
14 should be denied." *Martin*, 546 U.S. at 141. While it is true that there is no substantive basis to
15 support Peter's removal, he does aver that he at least believed his section 1983 claim was properly
16 raised and warranted removal. As a pro se litigant, Peter's lack of understanding as to the
17 specialized procedural hurdles involved in removal jurisdiction is understandable. Accordingly, the
18 Trust's motion for attorney fees is denied.

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20 IT IS SO ORDERED.

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22 Dated: 06/07/2010



23 RICHARD SEEBORG
24 UNITED STATES DISTRICT JUDGE

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No. C 10-1364 RS
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Peter Szanto
P.O. Box 10451
Newport Beach, CA 92658

DATED: 06/07/2010

/s/ Chambers Staff

Chambers of Judge Richard Seeborg

* Counsel are responsible for distributing copies of this document to any co-counsel who have not registered with the Court's electronic filing system.

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